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December 1, 1949

TO : EUR - Mr. Kohler
FROM : S/P - Gerard C. Smith
SUBJECT: Guaranteed City

Attached, for circulation to the State Department Working Group, is a very tentative draft Guaranteed City agreement, which was prepared by L/EUR and ourselves.

Attachment:

Cy 1 - Preliminary Draft.

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This Document consists of
11 pages, No. 24 of 24
Copies, Series B

PRELIMINARY DRAFT

November 20, 1959

CONVENTION ON WEST BERLIN ^{1/}

Whereas, the Governments of France, the United Kingdom, the United States of America, and the Union of Soviet Socialist Republics, hereinafter referred to as the Parties, jointly occupied Berlin subsequent to the defeat and unconditional surrender of Nazi Germany, and

Whereas, agreements between the Parties made provision for the exercise in Berlin on a quadripartite basis of the supreme authority assumed by the Parties in Germany, and

Whereas, such authority is not being exercised in Berlin on a quadripartite basis, because of past differences between the Parties, and

Whereas, such authority has been exercised in the Western Sectors of Berlin, hereinafter referred to as West Berlin, by the Governments of France, the United Kingdom, and the United States on a tripartite basis, and

Whereas,

- ^{1/} The attached draft East German declaration should be read in conjunction with this Convention.

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Whereas, the Parties likewise have entered into agreements and arrangements relating to freedom of access to and from West Berlin, and

Whereas, the Parties wish to make positive provision for the settlement by peaceful means of any disputes between them regarding Berlin,

Now, Therefore, the Parties, in order to guarantee the freedom of West Berlin and the right of the people of West Berlin to determine their own way of life free from any threat or pressure, do hereby agree as follows:

Article I

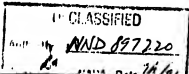
For the duration of this Convention the Government of West Berlin, within the boundaries marked on the map attached hereto as Annex I, shall exercise full authority over its internal and external affairs subject only to such limitations as are specifically set forth in this Convention.

Article II

No occupation rights in or relating to West Berlin shall be exercised for the duration of this Convention

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except:

a) insofar as such rights pertain to Germany as a whole, including the reunification of Germany and a peace settlement;

b) pursuant to the provisions of Article XI hereof,

(c) for the maintenance of Spandau Prison.⁷

Article III

1. West Berlin shall not enter into any military alliance or defense arrangements other than as provided in this article.

2. The Government of West Berlin may request any nation which is a member of the United Nations on the date this Convention becomes effective to station military forces in West Berlin up to a combined total of _____ military personnel. Within the aforesaid number the Government of West Berlin is free to request any such U.N. Member to station military personnel in such number as the said Government may consider desirable.

3. The arrangements governing the stationing of such military forces in West Berlin shall be agreed between the said Party and the Government of West Berlin.

4. No

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4. No military forces shall be stationed in or enter West Berlin except as provided for in this Convention. Within six months of the entry into force of this Convention, all military forces of any of the Parties hereto which are present in West Berlin shall be withdrawn except to the extent such forces may continue to be stationed in West Berlin pursuant to the foregoing provisions of this article and/or in order to continue existing arrangements for the guarding of Spandau prison⁷. Nothing in this Convention, however, shall limit the authority of the Government of West Berlin to maintain its own forces for the protection and defense of the city.

Article IV

Atomic weapons and missile installations shall not be located in West Berlin.

Article V

West Berlin shall be entitled to maintain the political relationships with the Federal Republic of Germany which are in effect at the date of the entry into force of this Convention, and to maintain or vary its economic and financial relationships with the Federal Republic of Germany in such manner as the Government of West Berlin may deem advisable.

Article VI

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Article VI

1. The Parties to this Convention and the Government of West Berlin shall, consistent with fundamental rights and liberties and the provisions of this Convention, avoid activities in or with respect to Berlin which disturb public order, seriously affect the rights and interests of others [or amount to interference in the internal affairs of others.]

Article VII

1. From the date of the entry into force of this agreement:

a. Free and unrestricted access to West Berlin by land, by water, and by air for all persons, goods and communications, including those of any military forces stationed in Berlin pursuant to the provisions of this Convention, shall be maintained in accordance with the procedures in effect in April 1959 [as set forth in Annex _____] ^{71/} except

1) German personnel may, without prejudice to the obligations assumed by the Parties hereto under this Convention, be substituted for

1/ It would be important to try to agree on and to set down these specific procedures in writing before the Guaranteed City arrangement took effect. If this is considered infeasible, the Quadripartite Commission would have to take on the task of codifying these procedures after the Guaranteed City arrangement took effect, before it could consider changes in these procedures, as provided in paragraph 2 on page 6.

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personnel of the Parties hereto at the working level in carrying out procedures which in April 1959 were executed by personnel of the Parties hereto;

11) The Autobahn Helmstedt-Berlin shall be kept open to traffic and maintained in good repair by and through traffic using the Autobahn between Helmstedt and Berlin shall be placed under the exclusive control ^{of} the International Autobahn Authority in accordance with the provisions set forth in the Charter, establishing the Authority, annexed hereto. No charges shall be levied on through traffic using the Autobahn between Helmstedt and Berlin except by the Authority. (Charter would authorize Authority to perform its specified functions and provide for its ^{an international civil servant,} management by/ perhaps appointed by the Secretary General of the United Nations.)

b. Intercourse and freedom of movement between East and West Berlin, including persons, goods, communications, transport and services, shall be maintained in accordance with the procedures in effect in April 1959. An set forth in Annex 1/

2. The procedures in effect in April 1959 shall be reviewed by the Quadripartite Commission established under Article IX. The Commission shall have power to amend or modify the existing procedures in all cases wherein such

action

1/ See footnote on page 5.

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action would tend to increase the effectiveness of the procedures. In order to accomplish this task, the Commission shall define and codify any existing procedures which have not been defined and codified before this agreement taken effect. In the event the Commission is unable to agree upon the existence, scope or content of any procedure in seeking to define and codify that procedure, any Party may refer the matter to the International Court of Justice (to the Berlin Arbitration Tribunal) pursuant to Article X of this Convention, and the definition and codification of that procedure shall then conform to the decision of the ICJ (Berlin Arbitration Tribunal). 71/

Article VIII

1. The fulfillment of the provisions relating to propaganda alternative language - the fulfillment of Articles III, IV, VI or VII of this Convention shall be observed by a Representative of the Secretary General of the United Nations, with adequate staff.

2. The Parties to this Convention shall request the Secretary General to appoint such Representative and staff within two months after the effective date of this Convention. Each Party shall pay one-fourth of the cost of the Representative and his staff.

3. The
1/ This language would of course be necessary if the procedures had been defined and codified before the agreement took effect.

3. The Representative and his staff shall be entitled to such privileges and immunities as are necessary to permit the successful discharge of their responsibilities, and shall have free access to all parts of Berlin and to the areas traversed by access routes to Berlin.

4. The Representative may, as the occasion arises, report to the Parties to this Convention regarding any activities which, in his opinion, appear to be in conflict with the fulfillment of the provisions relating to propaganda (alternative language - the requirements of Articles III, IV, VI and VII).

Article IX

1. A Quadripartite Commission shall be established which will meet in Berlin to examine any difficulties arising out of the interpretation or execution of this Convention.

2. Each of the parties to this Convention shall appoint one member of the Commission.

3. The Commission shall consider any complaint which may be advanced by one of the parties hereto regarding any action which such power considers to be in contravention of the provisions of this Convention
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and to consider any report concerning activities which appear to be in conflict with its provisions relating to propaganda [alternative language - Articles XII, IV, VI and VII] which may be submitted by the Representative of the Secretary General to the Parties to this Convention. The Commission shall base its decision in respect of any such complaint or report upon whether the action complained of is or is not in conformity with this Convention. Any decision of the Commission on a complaint or report, or regarding a procedure under Article VII hereof, must be concurred in by all four members of the Commission, and such decision shall be binding upon the Parties hereto and the West Berlin Government. ^{1/}

4. The Commission shall adopt such rules and may establish such subcommittees as it considers necessary or desirable to carry out its functions. The Committee may make arrangements, if necessary, to consult German experts.

Article X

1. Subject to the provisions of paragraph 2 of this article, any party to this Convention shall be entitled to request the International Court of Justice to render

1/ See attached East German declaration.

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to render a decision, including preliminary orders to meet any situation of urgency or emergency, regarding any question relating to the interpretation or execution of this Convention. Each Party hereto accepts the jurisdiction of the International Court of Justice in questions relating to the interpretation or execution of this Convention without reservation or qualification. A request for a decision submitted by any of the parties hereto shall be deemed as constituting an appearance before the Court by all of them and by the Government of West Berlin, and any such decision or preliminary order shall be fully binding upon each of the Parties hereto and upon the Government of West Berlin.

2. If a complaint or report relating to the interpretation or execution of this Convention has been submitted to the Quadripartite Commission pursuant to Article IX hereof, such complaint or report may be referred to the International Court of Justice by any Party hereto only if the Commission has not been able to reach agreement thereon within one month from the date of such submission. The Commission is empowered to extend this one-month period for such additional periods in respect of any specific complaint or report as it may agree unanimously.

Article X-

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Article X: Alternative to I.C.J.

1. A Berlin Arbitration Tribunal is hereby established which has jurisdiction to hear and determine all questions relating to the interpretation and execution of the Convention not otherwise disposed of. Any decision of the Tribunal, including any preliminary orders which the Tribunal may issue, shall be fully binding upon each of the Parties and upon the Government of West Berlin.^{1/}

2. The Tribunal shall be composed of seven members, as follows:

- a) a member selected by the French Government,
- b) a member selected by the British Government,
- c) a member selected by the United States Government,
- d) three members selected by the Government of the U.S.S.R.,
- e) a President selected by the Parties jointly.

If the Parties do not agree upon the President within one month of the coming into force of this Convention, the President of the International Court of Justice may appoint such President upon application of any Party.

If any Party fails to appoint its member or members to the Tribunal within one month of the coming into force of this Convention, the Tribunal shall nevertheless be fully competent to function after the aforesaid month with the members appointed.

Appointments.

1/ See attached East German declaration.

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Appointment to fill vacancies shall be made in the same manner as appointment of the member to be replaced.

3. The Tribunal shall hear, and decide by majority vote:

a) any matter regarding the interpretation or execution of this Convention referred to it by a Party which has not been submitted to the Quadripartite Commission,

b) upon application by any Party, any complaint or report submitted to the Quadripartite Commission, which the Commission is unable to decide within one month from the date of such submission.

4. The Tribunal shall adopt by majority vote such rules and regulations for the conduct of its business as it deems proper.

5. The seat of the Tribunal shall be in West Berlin. The Parties and the Government of West Berlin shall agree upon the necessary administrative arrangements for the Tribunal.

Article XI

In the event any action necessary fully to comply with a decision of the Quadripartite Commission or with a decision

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a decision or preliminary order of the International Court of Justice [Arbitration Tribunal] rendered pursuant to the provisions of this Convention is not taken within one week of such decision, any Party hereto shall be entitled to resume the exercise of any rights in or relative to West Berlin which it has agreed to limit, modify or suspend in this Convention.

Article XII

This Convention shall remain in force until Germany is reunified. Upon the reunification of Germany, any rights or authority of a governmental character which any of the Parties may have or claim to have with respect to Berlin shall be terminated.

Article XIII

This Convention shall enter into force upon signature by each Party hereto and upon the filing with the Secretary General of the United Nations by the Government of West Berlin of a certification that it [possible additional language -- has submitted the Convention to a plebiscite of the registered voters of West Berlin; that a majority of the voters participating in the plebiscite have voted in favor of the

Convention

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Convention entering into force; and that the Government of West Berlin⁷ accepts the provisions of the Convention as valid and binding upon West Berlin.

Upon signature, this Convention shall be deposited with the Secretary General of the United Nations.

End

(Note: Proposed declaration by East German authorities is shown on the following page.)

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DRAFT "GDR" DECLARATION

The German Democratic Republic has taken note of the Convention on West Berlin which has been signed by the Governments of France, the United Kingdom, the United States of America, and the Union of Soviet Socialist Republics on _____.

The German Democratic Republic will take all such action as may be necessary to facilitate the carrying out of the provisions of the Convention, including but not limited to those relating to free and unrestricted access to West Berlin and to maintenance of existing intercourse and freedom of movement between East and West Berlin. The German Democratic Republic will comply with any decisions of the Quadripartite Commission or the International Court of Justice /Berlin Arbitration Tribunal/ regarding matters submitted to such bodies pursuant to the Convention.

The German Democratic Republic will, consistent with fundamental rights and liberties, avoid activities in or with respect to Berlin which might either disturb public order or seriously affect the rights and interests of others /or amount to interference in the internal affairs of others/ and will insure that the city government of East Berlin will avoid such activities.

(This declaration would be issued immediately prior to the coming into force of the Convention.)

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Approved NND 897220

DATE 1/1/91